

1 THE HONORABLE THOMAS S. ZILLY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 BUNGIE, INC.,

10 Plaintiff,

11 v.

12 AIMJUNKIES.COM; PHOENIX DIGITAL
13 GROUP, LLC; DAVID SCHAEFER; JORDAN
14 GREEN; JEFFREY CONWAY; and JAMES
15 MAY,

Defendants.

No. 2:21-cv-00811-TSZ

BUNGIE, INC.'S MOTION TO FILE
OVERLENGTH SUMMARY
JUDGMENT BRIEF

NOTE ON CALENDAR:
May 4, 2023

16 Pursuant to Local Civil Rule 7(f), Plaintiff Bungie, Inc. ("Bungie") respectfully moves this
17 Court for leave to file an overlength brief in support of its forthcoming motion for summary
18 judgment on all claims and counterclaims in this action. The default word limit for a motion for
19 summary judgment is 8,400 words for the motion and opposition, and the default word limit for
20 reply briefs is 4,200 words. LCR 7(e)(3). Bungie requests 12,600 words for its opening brief and
21 Defendants' opposition, and 6,300 words for Bungie's reply. *See* LCR 7(f)(4) (if motion granted,
22 brief in opposition will automatically be allowed an equal number of additional pages and reply
23 brief shall not exceed one-half the total length of the opposition brief).

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BUNGIE'S MOTION TO FILE
OVERLENGTH BRIEF – 1
(No. 2:21-cv-00811-TSZ)

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1 Bungie files this motion because it intends to bring a motion for summary judgment
 2 concerning highly technical claims and facts that, if granted, would resolve the case in its entirety,
 3 including James May's and Phoenix Digital Group, LLC's ("Phoenix Digital") counterclaims.

4 Bungie asserts three theories of copyright infringement (direct, contributory, and vicarious)
 5 and two trademark infringement claims (15 U.S.C. §§ 1114 and 1125(a)). *See* Dkt. No. 34. Each
 6 of the copyright infringement theories consist of distinct elements, and the trademark infringement
 7 claims involve multifactor tests. Additionally, Bungie expects the summary judgment motion will
 8 resolve Bungie's damages claims, attorneys' fees, and requested injunctive relief.

9 May asserts four counterclaims, including three distinct claims under the Computer Fraud
 10 and Abuse Act (18 U.S.C. § 1030) ("CFAA") and a claim for circumvention of technological
 11 measures under the Digital Millennium Copyright Act (17 U.S.C. § 1201) ("DMCA"). *See* Dkt.
 12 No. 72. The CFAA and DMCA are complex federal statutes concerning whether access to a
 13 "protected computer" was "without authorization" and whether technological measures protecting
 14 access to a copyrighted work were "circumvented." Phoenix Digital also asserts a claim for breach
 15 of contract, concerning what (if any) "testing" Bungie performed on Defendants' Cheat Software.
 16 *See id.* The parties also assert a variety of affirmative defenses to these claims. *See id.*; Dkt. No.
 17 90.

18 The issues in this case are highly technical. Bungie's copyright infringement claims
 19 concern four registered copyrights for software code and audiovisual works that were infringed by
 20 Defendants. Resolution of these claims involves explanation of the complex functioning of
 21 Bungie's *Destiny 2* software code, including, for example, data structures for player positioning,
 22 rendering, and angle deltas for mouse movement, and how Defendants' Cheat Software copies,
 23 injects itself into, and modifies that *Destiny 2* software code. *See, e.g.*, Dkt. No. 36 (Declaration
 24 of Edward Kaiser explaining cheat software functioning). Defendants assert similarly technical
 25 causes of action against Bungie concerning, among other issues, the operation of *Destiny 2* on a
 26 user's computer and its supposed interaction with technological protection measures and files on

1 that computer. These counterclaims each contain detailed, specific elements that Counterclaimant
 2 must satisfy to meet his burden, and Bungie intends to move for summary judgment on every claim
 3 on multiple (if not all) elements of each of the counterclaims. Bungie believes that the parties and
 4 Court would benefit from briefing in excess of the normal limit in order to fully explicate the
 5 relevant, technical facts at issue in this case and fully address *all* of the legal claims asserted by
 6 the parties. Accordingly, Bungie's motion for summary judgment would be case-dispositive,
 7 including addressing damages and equitable relief.

8 Counsel for Bungie corresponded with Defendants' counsel regarding this motion to see if
 9 the parties could agree to stipulate to the relief requested. Defendants' counsel advised that
 10 Defendants would not agree to an expanded word limit.

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 12 I certify that this memorandum contains 588 words, in compliance with the Local Civil
 13 Rules.

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 15 Dated: May 4, 2023

By: s/ William C. Rava

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BUNGIE'S MOTION TO FILE
 OVERLENGTH BRIEF – 3
 (No. 2:21-cv-00811-TSZ)

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